

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF NAPA

The HONORABLE PHILIP A. CHAMPLIN, Judge

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THE PEOPLE OF THE STATE OF CALIFORNIA,)

Plaintiff,)

vs.)

No. CR182796



Defendant.)

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PRELIMINARY EXAMINATION

REPORTER'S TRANSCRIPT OF TESTIMONY AND PROCEEDINGS

--oOo--

Napa, California
Thursday, July 6, 2017
9:45 a.m.

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Reported by:

BENITA DUNCAN, CSR No. 6715

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July 6, 2017

9:45 a.m.

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The above-entitled matter came on regularly this day for hearing before the Honorable PHILIP A. CHAMPLIN, Judge.

ALLISON HALEY, District Attorney, County of Napa, 931 Parkway Mall, Napa, California 94559, represented by GARY VAN CAMP, Deputy District Attorney, appeared as counsel on behalf of the People.

RONALD ABERNETHY, Public Defender, County of Napa, 1127 First Street, Napa, California 94559, represented by JI-HYUN CHO, Deputy Public Defender, appeared as counsel on behalf of the Defendant.

BENITA DUNCAN, CSR No. 6715, Official Shorthand Reporter for the County of Napa, was duly present and acting.

The following proceedings were then and there had and taken, to wit:

P R O C E E D I N G S

THE COURT: Good morning. Let me call the matter of People versus [REDACTED]

Mr. Van Camp, are you ready for the People?

MR. VAN CAMP: Yes, your Honor.

THE COURT: Ready for the defense?

MS. CHO: Yes. Ji-Hyun Cho on behalf of Mr. [REDACTED]

THE COURT: Who is your investigating officer, Mr. Van Camp?

1 MR. VAN CAMP: Stuart Donaldson.

2 THE COURT: Do you have other witnesses in the
3 courtroom?

4 MR. VAN CAMP: Just my first witness, Sergio
5 Flores.

6 THE COURT: All right. All witnesses other than
7 the investigating officer and the first witness will be
8 ordered to remain outside the courtroom until called, and
9 not to discuss their testimony with other witnesses until
10 the hearing is concluded this morning.

11 Call your first witness then, Mr. Van Camp.

12 MR. VAN CAMP: Yes. Call Sergio Flores, please.

13 Thank you, your Honor.

14 SERGIO FLORES,

15 a witness called by the People, who, being first duly
16 sworn to tell the truth, the whole truth, and nothing but
17 the truth, was examined and testified as follows:

18 THE CLERK: Thank you.

19 THE BAILIFF: Take a seat.

20 Once you're seated, we'll have you state and
21 spell your first and last name for the record.

22 THE WITNESS: Sergio Flores. S-e-r-g-i-o,
23 F-l-o-r-e-s.

24 THE COURT: You may inquire, Mr. Van Camp.

25 DIRECT EXAMINATION

26 BY MR. VAN CAMP:

27 Q Your occupation?

28 A I'm a police Sergeant at Napa State Hospital,

1 Department of State Hospitals.

2 Q How long have you been a peace officer?

3 A For approximately six years.

4 Q More than five?

5 A Yes, sir.

6 Q And did you complete a POST academy training?

7 A I did.

8 Q And in that -- and this is a long question so
9 bear with me. Do your primary responsibilities include
10 enforcement of any law, the detection and apprehension of
11 persons who have violated any law, or the investigation
12 and preparation for prosecution of cases involving
13 violations of laws?

14 A Correct.

15 Q And, I'm sorry, you work at what agency?

16 A I work for the Department of State Hospitals,
17 Napa State Hospital.

18 Q And that's in Napa County?

19 A Correct.

20 Q And how long have you worked there?

21 A Approximately six years.

22 Q Okay. Were you involved on the unit where this
23 incident occurred on March 23 of this year?

24 A Yes, sir.

25 Q And when you arrived at that location, what was
26 going on?

27 A When I arrived on the unit, the fire department
28 was already there. They were attending to Mr. [REDACTED]

1 I asked the officers if they needed any medical
2 treatment, or if there was any injuries. Officer
3 Hauscarriague came to me and said that he had hit his
4 head on the -- on a block wall, and that he [REDACTED]

5 [REDACTED] When I was speaking to him, I noticed [REDACTED]
6 [REDACTED]

7 THE COURT: Can you spell that last name?

8 THE WITNESS: I wouldn't be able to.

9 MR. VAN CAMP: I can spell it.

10 H-a-u-s-c-a-r-r-i-a-g-u-e.

11 BY MR. VAN CAMP:

12 Q Okay. So you took care -- what unit was this on
13 again?

14 A This was unit T-13.

15 Q And this is inside the fenced area of the Napa
16 State Hospital grounds?

17 A Correct.

18 Q So by the time you got there -- you were not on
19 the initial response?

20 A No, sir, I was not.

21 Q And you took responsibility for assisting Officer
22 Hauscarriague?

23 A Yes.

24 Q And what did you do with him?

25 A I initially transported him to the hospital
26 clinic for initial medical assessment. After he was
27 assessed there on the ground by a nurse, we were -- the
28 nurse advised us to transport him to the Queen of the

1 Valley Medical Center for further medical treatment.

2 Q And you did that?

3 A Correct, yes.

4 Q And did you stay with him at the Queen of the
5 Valley Hospital?

6 A I did.

7 Q And how long were you there with him?

8 A A few hours. Approximately three hours.

9 Q And what happened at the end of that three hours?

10 A I drove him back to Napa State Hospital.

11 Q So were you with him when he was being examined
12 by the doctors?

13 A I was.

14 Q Did you make any observations about how the
15 officer was acting?

16 A He was having a hard time answering basic
17 questions, remembering his name, remembering his address,
18 where he lived. He was complaining of being nauseous,
19 light-headed, having a headache.

20 Q Okay. He was eventually evaluated and released?

21 A Yes.

22 Q Did you speak to any of the doctors?

23 A No, I did not. I was in the room.

24 Q Okay. Did you overhear any of the doctors advise
25 as to what was wrong with the officer?

26 A Yes.

27 MS. CHO: Objection. Foundation.

28 THE WITNESS: Yes.

1 THE COURT: Just a second. It would come in as
2 115 hearsay. The foundation you're objecting to is the
3 basis upon which the doctors expressed their opinions; is
4 that right?

5 MS. CHO: That's correct.

6 THE COURT: I'll permit it subject to a motion to
7 strike if that doesn't connect up. It would seem to me
8 that in the -- the witness hasn't testified to whether
9 they were in the emergency room or where they were, but
10 perhaps you could at least develop that, Mr. Van Camp.
11 And then depending on what the witness heard the
12 officer -- the doctors say, I think it may become
13 evidence. What foundation they base their statements on.

14 MR. VAN CAMP: Okay. That's fine.

15 BY MR. VAN CAMP:

16 Q You stayed with the officer all the time he was
17 being examined by the doctors?

18 A I did, sir.

19 Q And do you recall how many doctors were there?

20 A One.

21 Q Okay. And did -- at some point during the
22 evaluation, officer, did an officer make a statement
23 about what was wrong with him?

24 THE COURT: You mean a doctor? Was this in the
25 emergency room?

26 THE WITNESS: Yes, it was in the emergency room.

27 BY MR. VAN CAMP:

28 Q Do you recall the doctor's name?

1 A I do not recall.

2 Q Did they spend some time examining the officer in
3 the ER?

4 A Yes, they did.

5 Q And after the exam, did you overhear any
6 statements about what the doctor thought was wrong with
7 the officer?

8 A The doctor believed [REDACTED]
[REDACTED] recommended, like, he should be placed off
10 work for a couple of days. I'm Officer Hauscarriague's
11 direct supervisor, so he spoke with me and asked if it
12 would be okay if he could be taken off the schedule, or
13 given a couple of days off.

14 MS. CHO: Objection.

15 THE COURT: No, I'll permit it. Overruled. It's
16 pretty basic emergency room evaluation, and conclusion.

17 MR. VAN CAMP: Thank you, your Honor.

18 THE COURT: With trauma victims.

19 BY MR. VAN CAMP:

20 Q So after the exam was completed, he was released
21 to go home, or go back to the police department?

22 A Yes, sir.

23 Q And did you -- did his condition improve as far
24 as you were able to tell from the time you spent with him
25 on the way home?

26 A No, sir.

27 Q How long did you spend with him after that?

28 A Approximately an hour.

Q And was he able to -- was someone able to come and pick him up and take him home?

A Yes, sir.

Q From the police department?

A Yes, sir.

Q And his condition remained the same?

A Yes, sir.

MR. VAN CAMP: Nothing else.

THE COURT: Cross?

MS. CHO: No questions for this witness.

THE COURT: Okay. Thank you, Sergeant.

THE WITNESS: All right. Thank you.

THE COURT: Next witness?

MR. VAN CAMP: I'm going to call Officer Michael Hauscarriague.

MICHAEL HAUSCARRIAGUE,

a witness called by the People, who, being first duly sworn to tell the truth, the whole truth, and nothing but the truth, was examined and testified as follows:

THE WITNESS: I do.

THE CLERK: Thank you.

THE BAILIFF: And once you're seated, we'll have you state and spell your first and last name for the record.

THE WITNESS: Michael Hauscarriague.

M-i-c-h-a-e-l, H-a-u-s-c-a-r-r-i-a-g-u-e

THE COURT: Thank you. You may inquire, Mr. Van Camp.

DIRECT EXAMINATION

BY MR. VAN CAMP:

Q And, officer, your occupation?

A I'm a police officer at Napa State Hospital.

Q Okay. And how long have you been a police officer?

A Approximately three years.

Q And did you completed a POST academy training in order to become a police officer?

A Yes, I did.

Q And in that training, did you complete a course in giving hearsay testimony at a preliminary hearing pursuant to Prop 115?

A Yes, I did.

Q And have you previously qualified in the courts of Napa under Prop 115?

A Yes, I have.

Q Were you on duty at the Napa State Hospital in Napa County on March 23rd of this year?

A Yes, I was.

Q And what was your duty that day?

A I was on bike patrol, inside the secure treatment area.

Q Okay. So what does bike patrol mean?

A I'm on a specialized unit that bikes around the treatment area.

Q Did you respond to an alarm at one of the units?

A Yes, I did.

1 Q What unit was that?

2 A Unit T-13.

3 Q And what time of day was that, as well as you

4 remember?

5 A Approximately 1530 hours.

6 Q So in the afternoon?

7 A Yes, sir.

8 Q Okay. You were injured during this call?

9 A Yes, sir.

10 Q And is your memory clear about everything that

11 happened to you that day?

12 A Not completely.

13 Q Okay. So you'll do the best you can about what

14 you remember?

15 A Yes, sir.

16 Q Thank you.

17 So when you got to T-13, did you arrive

18 there with other officers?

19 A Yes, I did.

20 Q Was there somebody else on bike patrol with you?

21 A Yes.

22 Q Who was that?

23 A Officer Becerra, Officer Donaldson, Officer

24 Tweedy, and Officer Truong.

25 Q Can you spell Truong?

26 A T-r-o-u-n-g.

27 Q And T-w-e-e-d-y?

28 A That's correct.

1 Q Okay. Thank you.

2 So when you all arrived there, what did you
3 first observe or hear?

4 A I heard patient [REDACTED] yelling in the courtyard.
5 He was staring out at the courtyard gate at us, and was
6 yelling at us. Or yelling, in general.

7 Q And can you describe this courtyard area for the
8 court so he can know what you're talking about?

9 A It's a paved outdoor area with basketball hoop,
10 tables, ping pong table.

11 Q And is it fenced?

12 A Yes, it is.

13 Q And it is -- is it attached to the actual units
14 where the rooms are in the nurse's station?

15 A Yes, it is.

16 Q And patients have access to this courtyard?

17 A Yes, they do.

18 Q And is there exercising, or room to move around
19 in that courtyard?

20 A Yes, sir.

21 Q Now, you said that you heard or saw patient

22 [REDACTED] Did you hear him or see him first?

23 A I heard him first.

24 Q And did you know who he was? Had you had prior
25 contact with him?

26 A I had. I had had prior contact with him.

27 Q And do you see him here in the courtroom?

28 A Yes, I do..

1 Q And could you identify where he's seated and what
2 he's wearing, so the judge knows who you are talking
3 about?

4 A Seated across from me, to my right, with blue
5 shirt and blue pants, with orange shoes.

6 THE COURT: The record may reflect identification
7 of the defendant.

8 MR. VAN CAMP: Thank you, your Honor.

9 BY MR. VAN CAMP:

10 Q And your prior contacts with him had been in what
11 respect?

12 A I had been informed a couple of days prior that
13 he had made threats on an officer's life so he could go
14 back to jail. And I had also been informed that she had
15 been known to make shanks. And had assaulted an officer
16 before in the past, as well.

17 MS. CHO: Objection. Foundation. And two levels
18 of hearsay.

19 THE COURT: I couldn't hear for part of his
20 statement.

21 The purpose of this testimony is?

22 MR. VAN CAMP: Is not for the truth of the
23 matter, just on his prior familiarity with the defendant.

24 THE COURT: Is it your intention to have the
25 officer explain what he did at that point in relation to
26 what he had heard about the defendant, or what's the
27 relevance of it?

28 MR. VAN CAMP: How about if I withdraw the

1 question and answer.

2 THE COURT: All right. Objection is moot.

3 BY MR. VAN CAMP:

4 Q Did you have any personal contact with
5 Mr. [REDACTED] before this date?

6 A I had have had personal contact.

7 Q And was that on the units?

8 A Yes, it was.

9 Q Okay. How long had it been since you had
10 personal contact with him?

11 A I couldn't tell you for sure.

12 Q Okay. How many times do you think before this
13 date did you have contact with him on the unit?

14 A Approximately two times.

15 Q Okay. And you had information that he had made
16 threats to officers?

17 A That's correct.

18 MS. CHO: Objection. Foundation.

19 THE COURT: I'll permit it. Again, subject to a
20 motion to strike once I see where this is going.

21 BY MR. VAN CAMP:

22 Q Had he ever threatened you?

23 A Yes, he had.

24 Q Okay. So let's talk about that.

25 How much time to this incident had he
26 threatened you?

27 A I couldn't tell you for sure.

28 Q Do you have an estimate as to how many weeks, or

1 months it was?

2 A Approximately two months. Maybe.

3 Q Okay. And was he -- and were you on the unit to
4 deal with him or someone else at the time?

5 A With him.

6 Q And had he -- and he threatened to harm you on
7 this prior incident?

8 A He had threatened to harm us in the future, yes.

9 Q What did he say to you?

10 A That he would kick our ass.

11 Q Okay. That was it? There was no more?

12 A That's correct.

13 Q There was no more substance to the threat than
14 that?

15 A No.

16 Q And he -- okay.

17 When you arrived on March 23rd, you saw
18 Mr. [REDACTED] in the courtyard?

19 A Yes.

20 Q And where was he?

21 A He was standing on the courtyard gate, that would
22 exit the courtyard.

23 Q So there's a gate that accesses outside, from the
24 ground of the hospital to the courtyard?

25 A That's correct.

26 Q And is this locked?

27 A Yes, it is.

28 Q Who else was near the defendant when you first

1 saw him that day?

2 A I don't remember anyone being near him.

3 Q Did you find that to be unusual?

4 A Yes.

5 Q Why is that?

6 A Because normally when there's an alarm pulled,
7 there is normally staff near to him trying to calm him
8 down. And if there not near him, something is wrong.

9 Q Okay. So what did you do next after you noticed
10 that?

11 A I told him to turn away from the gate.

12 Q And did you see anybody else in the courtyard at
13 this point?

14 A Yes, I did.

15 Q Who else was in there?

16 A There were multiple staff members standing on the
17 opposite side of the courtyard.

18 Q How big is this courtyard? Can you describe it?

19 A I couldn't tell you size.

20 Q Is it bigger than this courtroom?

21 A Yes, I think so.

22 Q Okay. A lot bigger or slightly bigger than this
23 courtroom?

24 A Slightly bigger than this courtroom.

25 Q Okay. So did he comply with your request to step
26 away from the gate?

27 A Yes, he did.

28 Q And what was the purpose of asking him to step

1 away from the gate?

2 A So we could enter the courtyard.

3 Q And how did you do that? How did you access the
4 courtyard?

5 A Another officer opened the gate, and I entered.

6 Q And were you the first one to enter?

7 A Yes, I was.

8 Q And who else entered with you?

9 A I don't know for sure.

10 Q Okay. Did you assume that all the officers
11 entered the gate with you?

12 A Yes.

13 Q Okay. And you were with at least four other
14 officers?

15 A Yes.

16 Q Okay. What happened after you entered the gate?
17 Did the defendant address you, or talk to you?

18 A No, he did not.

19 Q What happened next?

20 A He was turned away from me, and his fists were
21 clenched. He was yelling still. And he kicked a ball on
22 the ground.

23 Q And then what happened?

24 A I went to contain him on the ground, and --

25 Q Why did you want to contain him on the ground?

26 A I wanted to contain him on the ground for the
27 safety of the staff, and my fellow officers. I felt like
28 that was the quickest and best way of controlling the

1 situation.

2 Q Were you in a full police uniform?

3 A Yes, I was.

4 Q And did you have any -- can you describe that
5 uniform?

6 A Black shirt, black pants, with a black vest.

7 Q And are you identified as a police officer on
8 that uniform?

9 A Yes, I am.

10 Q How are you identified?

11 A I have a police badge, and the words police.

12 Q Where are the words police?

13 A Right on the front.

14 Q Had you been wearing that similar uniform in your
15 prior contact with the defendant when he made a threat to
16 you?

17 A Yes.

18 Q Okay. Were the other officers that were with you
19 similarly dressed?

20 A Yes, they were.

21 Q In the same identifying uniform?

22 A Yes.

23 Q So your -- you made an attempt to restrain or
24 contain Mr. [REDACTED]

25 A That's correct.

26 Q And how did you do that?

27 A I wrapped my arms around his torso.

28 Q Okay. And was there any other officer with you

1 when you did that?

2 A Not that I remember.

3 Q And what happened next?

4 A We went toward the wall, which was approximately
5 five feet away from us.

6 Q Okay. And what happened after that?

7 A We hit the wall, and fell to the ground.

8 Q Okay. So when you wrapped up -- or put your arms
9 around of Mr. [REDACTED] were you able to lock your arms?
10 Lock your hands?

11 A I don't remember.

12 Q Okay. When you put your arms around him, what
13 did he do?

14 A I don't remember.

15 Q Okay. And you remember after you had your arms
16 on him, or around him, the two of you moving towards the
17 wall?

18 A That's correct.

19 Q Okay. And do you remember hitting the wall?

20 A I do.

21 Q And do you know how you hit the wall?

22 A I don't.

23 Q You don't remember?

24 A I don't remember.

25 Q Okay. What's the next thing you do remember?

26 A I remember my ears ringing. And patient [REDACTED]
27 was on the ground, face down. And I asked him if he was
28 okay.

1 Q What did he say?

2 A He said no, he wasn't okay.

3 Q What happened next?

4 A Officer Truong [REDACTED] him, and we put him
5 into his recovery position.

6 Q So you had -- had you hit the wall with your
7 head?

8 A I believe so.

9 Q Okay.

10 MS. CHO: Objection. Speculation.

11 THE COURT: Overruled.

12 BY MR. VAN CAMP:

13 Q Did you know if the defendant, Mr. [REDACTED] did
14 he hit the wall?

15 A I believe so.

16 Q With you, together?

17 A Yes.

18 Q As far as you know?

19 A Yes.

20 Q Okay. After the defendant was [REDACTED], what
21 happened next?

22 A We asked for nursing staff to give him medical
23 attention, and called for the medical unit at Napa State
24 Hospital to come.

25 Q And what happened with you?

26 A I went inside and washed my hands, and came back
27 out, and was taken to for medical evaluation.

28 Q And how were you feel at that point?

1 A I was feeling dazed, and losing my focus. I
2 would focus on things, and not. When I was talking to
3 somebody, I wouldn't respond to them.

4 Q How did you get to the medical unit?

5 A I was taken by my Sergeant.

6 Q And how did he take you?

7 A He took me in a patrol vehicle.

8 Q Okay. So did the Sergeant arrive at the unit in
9 a patrol vehicle, as far as you know?

10 A As far as I know.

11 Q And the unit that you went to -- the medical unit
12 is outside the fenced, secured treatment area?

13 A That's correct.

14 Q And how long were you there at the medical unit?

15 A Approximately 30 minutes.

16 Q And where did you go after that?

17 A Queen of the Valley.

18 Q And do you remember being at the medical unit?

19 A I do.

20 Q And how were you feeling at that point?

21 A The same as before.

22 Q And when you went to the hospital, do you know
23 how long you were at the hospital?

24 A Approximately two hours.

25 Q And Sergeant Flores took you there?

26 A Yes, he did.

27 Q As far as you know, did Sergeant Flores stay with
28 you?

1 A He told me I had [REDACTED]

2 Q What was -- what advise were you given about
3 going back to work?

4 A I was told I needed to take the next three days,
5 and then my two regular days off. And I was told that I
6 couldn't drive for 24 hours. And I was told that I
7 needed to be monitored for the next 24 hours, while I
8 sleep, and be woken up every three hours.

9 Q Were you able to be taken back to the police
10 department?

11 A Yes, I was.

12 Q And did you -- were you able to get home from
13 there?

14 A Yes, I was.

15 Q Someone came and picked you up?

16 A Yes.

17 Q And how were you feeling when you got home?

18 A Sore. [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED]

21 Pretty much that's it.

22 Q Were you able to sleep that night?

23 A Not well.

24 Q The next day, how did you feel?

25 A Felt better, but still sore and still having
26 headaches.

27 Q Were you able to sleep that next night, or the
28 next day?

1 A Yes, I was.

2 Q Two days later, how were you feeling?

3 A Still similar. Sore. And still had headaches.

4 Q Did those conditions improve the next day?

5 A They improved continually.

6 Q Were you able to go back to work?

7 A Yes, I was.

8 Q When was -- how many days after the injury were

9 you able to go back to work?

10 A Six days.

11 Q And was that a light-duty assignment?

12 A Yes, it was.

13 Q Did you have a follow-up visit to a medical

14 doctor?

15 A Yes, I did.

16 Q And were you cleared for work duty at that point?

17 A Yes, I was.

18 Q And were you still on light duty?

19 A Yes, I was.

20 Q How long were you on light duty?

21 A I'm still on light duty.

22 Q Okay. Is that due to -- never mind. Strike

23 that.

24 Nothing further.

25 CROSS-EXAMINATION

26 BY MS. CHO:

27 Q Good morning, officer?

28 A Good morning.

1 Q You were interviewed in this case; is that
2 correct?

3 A That's correct.

4 Q And did you write your own report in this case?

5 A No, I did not.

6 Q Prior to testifying today, did you review any
7 materials?

8 A Yes, I did.

9 Q What did you review?

10 A I reviewed the report which I was interviewed.

11 Q In addition to your training to become a police
12 officer, did you undergo any additional training to be a
13 Napa State Hospital police officer?

14 A Yes, I did.

15 Q Can you describe that?

16 A It's FTO program that every officer goes through.

17 Q Okay. And how is that different than being a
18 police officer for the city? Is it specialized in the
19 hospital?

20 A I don't know. I haven't worked for a city.

21 Q Okay. Did you receive any specialized training
22 to be a police officer at a state hospital?

23 A I received the training that they give at the
24 hospital.

25 Q Okay. And what kind of procedures does the state
26 hospital have when engaging with state hospital patients?

27 A I'm sorry?

28 Q What kind of procedures does the state hospital

1 have when physically engaging with state hospital
2 patients?

3 A I'm not sure what you mean.

4 Q Are you allow to make physical contact with a
5 state hospital patient at any time?

6 A When they are a danger, yes.

7 Q So when -- is there any policy that governs when
8 you can make physical contact with someone in accordance
9 with your belief that they are a danger?

10 A There is use of force policy.

11 Q Okay. Can you describe that, when you're making
12 contact with a patient, when you're allowed to use force?

13 A When other's safety -- life and safety is in
14 jeopardy. That's when I'm allowed to use force.

15 Q And are there any policies about what you should
16 do to try to deescalate the situation before placing your
17 hands on a patient?

18 A Policies?

19 Q Yes.

20 A I believe so.

21 Q What are those?

22 A I'm note sure.

23 Q Are you supposed to try to talk to a patient
24 before resorting to physical contact?

25 A When it is -- when you can, yes.

26 Q And are there policies about what kind of force
27 you should use?

28 A There are levels of force, yes.

1 Q And what type of force would you say that you
2 used with Mr. [REDACTED] on March 23rd?

3 A The lowest amount of force possible.

4 Q And what kind of hold did you try to do?

5 A It wasn't any particular hold.

6 Q How long were you in the courtyard prior to
7 making physical contact with Mr. [REDACTED]

8 A Approximately ten seconds.

9 Q Did you issue any commands?

10 A I don't remember.

11 Q And you were with four other officers?

12 A That's correct.

13 Q And did you discuss with other officers if you
14 were going to make contact, come up with a plan?

15 A I'm sorry, can you repeat the question?

16 Q Sure. Prior to making contact with Mr. [REDACTED]
17 did you discuss with other officers if you were going to
18 make physical contact with Mr. [REDACTED]

19 A No, I did not.

20 Q So you didn't convey to the other officers with
21 you, I'm going to do this with Mr. [REDACTED]

22 A No, I did not.

23 Q Okay. Did you feel that you needed to make
24 physical contact with Mr. [REDACTED]

25 A I felt like he was a threat to me and everyone
26 else in the courtyard.

27 Q And you said rest of the staff was in an area
28 away from Mr. [REDACTED] is that correct?

1 A That's correct.

2 Q And Mr. [REDACTED] was within how many feet of
3 anyone else, except for the officers?

4 A Approximately 20 feet.

5 Q And when you entered the courtyard, Mr. [REDACTED]
6 was kind of pacing the courtyard; is that correct?

7 A That's correct.

8 Q And could you see both of his hands?

9 A Yes, I could.

10 Q And what were his hands doing?

11 A His fists were clenched.

12 Q What was Mr. [REDACTED] wearing?

13 A I don't remember.

14 Q Is there clothing that people typically wear on
15 unit T-13, do you know?

16 A All patients typically wearing tan clothes.

17 Q Do you know if there are pockets?

18 A Some have pockets, some don't.

19 Q Did you ever see Mr. [REDACTED] put his hands in his
20 pocket?

21 A No.

22 Q Did he make any motions toward his waistband?

23 A I don't remember.

24 Q Okay. And the whole time you saw him, in those
25 two seconds or so before making contact, his hands were
26 clenched?

27 A Yes.

28 Q Do you remember if he had anything in either one

1 of his hands?

2 A I don't remember.

3 Q Do you remember if he had a Walkman in either one
4 of his hands?

5 A I don't remember.

6 Q Are you aware of any prior acts of violence by
7 Mr. [REDACTED] at the hospital?

8 A Yes, I am.

9 Q And when was that?

10 A I couldn't tell you.

11 Q And were you aware of that on March 23rd?

12 A Yes, I was.

13 Q And it was physical violence?

14 A Yes.

15 Q Were you aware that Mr. [REDACTED] had recently had
16 his medicine changed?

17 A No, I wasn't.

18 Q And working at the state hospital, is it common
19 for patients to make threats to staff?

20 A Is it common?

21 Q That's correct?

22 A For some.

23 Q Okay. And working at the state hospital, these
24 are -- particularly in unit T-13, these are people
25 committed by a court to stay at the state hospital; is
26 that correct?

27 A Yes.

28 Q Usually in relation to some sort of crime?

1 A I believe so.

2 Q And the mental states of the patients on that
3 unit can vary; is that correct?

4 A I believe so.

5 Q And these are people that have been diagnosed
6 with severe mental illnesses; is that correct?

7 A I don't know what they have been diagnosed with.

8 Q In order to be a patient at the state hospital,
9 there has to be some kind of mental illness; is that
10 correct?

11 A I believe so.

12 Q And patients at the state hospital, it is not
13 unusual for them to have outbursts; is that correct?

14 A For?

15 Q It is not unusual for them to yell threats to
16 police officer; is that correct?

17 A Yes.

18 Q And every time a patient makes a threat, does
19 that mean that physical violence follows?

20 A No.

21 Q You stated earlier that -- I don't know if it's
22 prior to you entering the courtyard, Mr. [REDACTED] kicked a
23 ball?

24 A I'm sorry?

25 Q Mr. [REDACTED] kicked a ball?

26 A Yes.

27 Q Was that prior to you entering the courtyard or
28 after?

1 A After.

2 Q And how far away were you from Mr. [REDACTED] when
3 he kicked the ball?

4 A Approximately five feet.

5 Q In which direction did he kick the ball?

6 A To my right.

7 Q And was he facing you when he kicked the ball?

8 A No.

9 Q Which way was he facing?

10 A To my right.

11 Q Was his back toward you, or his face toward you?

12 A His back was toward me.

13 Q And so did the ball come toward you or away from
14 you?

15 A Away from me.

16 Q Was anyone standing in the area that the ball was
17 kicked?

18 A No.

19 Q Any other movements by Mr. [REDACTED] after you
20 entered the courtyard?

21 A I don't remember.

22 Q Can you tell us how tall you are, officer?

23 A Approximately six feet.

24 Q And how much do you weigh?

25 A Approximately 225.

26 Q Okay. And can you approximate Mr. [REDACTED]
27 height?

28 A [REDACTED]

1 Q Can you approximate his weight?
2 A [REDACTED]
3 Q And does he appear to be the same weight as he
4 was on March 23rd?
5 A I don't remember.
6 Q And does Mr. [REDACTED] appear in his [REDACTED] to you?
7 THE COURT: Appear what?
8 MS. CHO: In his [REDACTED]
9 THE WITNESS: No.
10 BY MS. CHO:
11 Q What age would you think he is?
12 A [REDACTED], maybe.
13 Q When you went to Mr. [REDACTED] to restrain him, his
14 back was toward you, right?
15 A Say it again.
16 Q Mr. [REDACTED] back was toward you?
17 A Yes.
18 Q And when you went up, you said you wrapped your
19 arms around his torso?
20 A That's correct.
21 Q So given the difference in height, did you put
22 your arms down around his torso?
23 A I don't remember.
24 Q And you don't remember what Mr. [REDACTED] did after
25 you put his arms around his torso?
26 A I don't.
27 Q How far were you from the wall when you made that
28 contact?

1 A Approximately five feet.

2 Q And you're not sure how he went into the wall?

3 A I'm not sure.

4 Q Do you remember how Mr. [REDACTED] looked after the
5 incident?

6 A Yes.

7 Q He was [REDACTED] is that correct?

8 A That's correct.

9 MS. CHO: May I have Madam Clerk mark these
10 exhibits.

11 THE COURT: Yes.

12 MS. CHO: May I approach the witness, your Honor?

13 THE COURT: Yes.

14 BY MS. CHO:

15 Q I'm showing you what's been -- what now has been
16 marked as Defense Exhibit A.

17 Do you recognize who's in this photo,
18 officer?

19 A Yes, I do.

20 Q Is that Mr. [REDACTED]

21 A Yes, it is.

22 Q And does that appear to be a correct depiction of
23 how Mr. [REDACTED] looked after you both hit the wall on
24 March 23rd?

25 A Yes, it does.

26 Q Prior to your interview by Officer Becerra, did
27 you speak to anybody about the incident?

28 A No.

1 Q Okay. And have you since discussed with anybody
2 what happened during this incident with you and Mr.

3 [REDACTED]

4 A Yes, I have.

5 Q Other people told you about what they saw, in
6 terms of the takedown?

7 A Yes, they have.

8 Q Okay. And has that -- was that prior to your
9 interview with Officer Becerra or after?

10 A I'm sorry, I'm confused. I don't remember being
11 interviewed by Officer Becerra.

12 Q I'm sorry. Was it by Officer Donaldson?

13 A I was interviewed by Officer Davies.

14 Q Okay. So prior to your interview with Officer
15 Davies, did you talk to anybody about what they witnessed
16 between you and Mr. [REDACTED]

17 A No, I did not.

18 Q After that interview, did you talk to anybody
19 about what happened between you and Mr. [REDACTED]

20 A Yes.

21 Q And have you -- who did you speak to about the
22 incident?

23 A Pretty much everybody involved.

24 Q And did you remember anything that has been told
25 to you to supplement your memory about what happened
26 during the incident with Mr. [REDACTED]

27 A No.

28 MS. CHO: No further questions.

1 THE COURT: Redirect?

2 MR. VAN CAMP: No.

3 THE COURT: Okay.

4 MR. VAN CAMP: Maybe briefly, your Honor.

5 REDIRECT EXAMINATION

6 BY MR. VAN CAMP:

7 Q Were you aware of what the response was, the
8 reason for the alarm when you arrived?

9 A I was not aware.

10 Q Okay. Ask did you hear the defendant say
11 anything, or yelling, before you arrived on the unit?

12 A I heard him yelling.

13 Q Do you know what he was yelling?

14 A Swearing. I don't know exactly what he was
15 yelling, no.

16 Q And how far away from the courtyard were you when
17 you heard the yelling?

18 A Ten feet, approximately.

19 Q You didn't hear it before that?

20 A No.

21 MR. VAN CAMP: Okay. Thank you.

22 THE COURT: Recross?

23 BY MS. CHO:

24 Q I wanted to clarify, very briefly.

25 When you went to grab Mr. [REDACTED] and wrap
26 your arms around his torso, did you have to run toward
27 him? How did that movement happen?

28 A Yes, I ran toward him.

1 Q About how many feet?

2 A Approximately five.

3 MS. CHO: No further questions.

4 FURTHER REDIRECT EXAMINATION

5 BY MR. VAN CAMP:

6 Q When you put your arms around him, did he resist
7 you or struggle?

8 A I don't remember.

9 MS. CHO: Objection, calls for a legal
10 conclusion.

11 THE COURT: Overruled. The answer is I don't
12 remember.

13 MR. VAN CAMP: Okay. Nothing else, your Honor.

14 THE COURT: Okay. Thank you, officer.

15 Next witness.

16 MR. VAN CAMP: Call Officer Truong.

17 VUONG TRUONG,

18 a witness called by the People, who, being first duly
19 sworn to tell the truth, the whole truth, and nothing but
20 the truth, was examined and testified as follows:

21 THE WITNESS: I do.

22 THE CLERK: Thank you.

23 THE BAILIFF: Take a seat.

24 Once you're seated, we'll have you state and
25 spell your first and last name for the record.

26 THE WITNESS: Officer Vuong, V-u-o-n-g, last name
27 Truong, T-r-u-o-n-g.

28 ///

DIRECT EXAMINATION

BY MR. VAN CAMP:

Q Your occupation?

A Police officer at Napa State Hospital Police Department.

Q How long have you been a police officer?

A A little over a year now.

Q Did you complete a POST academy training to become a police officer?

A I did not.

Q Did you complete POST courses at a POST academy?

A Yes, I did.

Q And was one of those courses a course in giving hearsay testimony at a preliminary hearing pursuant to Prop 115?

A Yes, sir.

Q And did you pass that course?

A Yes, sir.

Q Have you previously testified pursuant to that, Prop 115?

A I have not.

Q Do your -- does one of your primary responsibilities include the enforcement of any law, the detection and apprehension of persons who have violated any laws, or the investigation and preparation for prosecution of cases involving violations of the law?

A Yes, sir.

Q Were you on duty the 23rd of March of this year,

1 in Napa County, at Napa State Hospital?

2 A Yes.

3 Q And did you respond to an alarm call?

4 A Yes, I did.

5 Q In the afternoon?

6 A Yes, sir.

7 Q Do you remember about what time that was?

8 A About 1547 hours.

9 Q Where were you when you heard the alarm, or
10 responded to the alarm?

11 A I was in the Gus O'Farrell substation. We have a
12 substation near the courtyard.

13 Q You used some other term for the name of the
14 substation?

15 A Gus O'Farrell, located 40 feet from the actual
16 courtyard.

17 THE COURT: I don't think the reporter still got
18 the name of the substation.

19 BY MR. VAN CAMP:

20 Q Can you spell the name.

21 A G-u-s, O-F-a-r-r-e-l-l.

22 THE COURT: That a person's name?

23 THE WITNESS: It's -- I think it is the name of a
24 business. But it is also the name of our substation for
25 our department.

26 THE COURT: Okay.

27 MR. VAN CAMP: News to me too, your Honor.

28 BY MR. VAN CAMP:

1 Q So did you hear -- what unit did you respond to
2 with the alarm?

3 A The unit T-13 courtyard.

4 Q And how did you get to T-13 from where you were?

5 A I ran over there.

6 Q Did you run with any other officer?

7 A Yes.

8 Q Who else?

9 A It was Officer Donaldson, Officer Tweedy and
10 Michael Hauscarriague.

11 Q And do you recall if Officer Jose Becerra was
12 with you?

13 A Yes, he was there, as well.

14 Q Did you hear anything coming from the unit before
15 you arrived?

16 A Yes, I heard screaming. Yelling?

17 Q And did you know who was yelling?

18 A I did not.

19 Q And when you -- do you remember what you heard
20 being yelled?

21 A I do not remember.

22 Q Was it a male voice or female voice?

23 A A male's voice.

24 Q How far away from the unit were you when you
25 heard the yelling?

26 A It was right outside the door of the substation.
27 Must have been 60 feet for so.

28 Q Okay. So when you got to the unit, where did you

1 go?

2 A We approached the unit through the courtyard
3 gate.

4 Q And did you see anything -- something in the
5 courtyard when you reached the gate?

6 A Yes. I saw a subject with his back turned away
7 from the courtyard gate, yelling at staff.

8 Q And what was the person yelling?

9 A I'll kill you all.

10 Q And he was not facing you when he said that?

11 A No.

12 Q Okay. And what was the person doing as he was
13 yelling?

14 A He had his fists clenched by his sides. There
15 were staff members surrounding him, but from a distance.
16 Just glaring at staff members.

17 Q And who was the person who yelled, I'll kill you
18 all?

19 A Mr. [REDACTED]

20 Q Do you see him here in the courtroom?

21 A Yes, I do.

22 Q And can you identify him, please?

23 A This gentleman right over here (indicating).

24 Q And describe what he's wearing and where he's
25 sitting, so the judge knows who you are talking about?

26 A Seated on the right side of the judge, in the
27 courtroom.

28 Q And what's he wearing?

1 A Wearing a black shirt, and blue pants.

2 MR. VAN CAMP: May the record reflect
3 identification?

4 THE COURT: The record will reflect I believe
5 he's referring to the defendant.

6 MR. VAN CAMP: Thank you, your Honor.

7 BY MR. VAN CAMP:

8 Q Did you or other officers attempt to get
9 defendant's attention before you entered the courtyard?

10 A Another officer did.

11 Q And what did the defendant do when that was
12 attempted?

13 A He -- for the most part, he did comply.

14 Q Did he ever say anything to you as you approached
15 the courtyard?

16 A Well, we were trying to get through the
17 courtyard, and Officer Donaldson told him to step away
18 from the gate so we could enter. And the defendant
19 yelled, I'll kill you all, one by one.

20 Q He stated that to who?

21 A Staff members, and general direction, as he was
22 turning away from the courtyard.

23 Q Do you recall him yelling anything else?

24 A Not from that point.

25 Q Not at all?

26 A I don't remember anything else that he said
27 during that moment.

28 Q Okay. Do you recall him saying anything else

1 after you entered the courtyard?

2 A Yes.

3 Q What did he say?

4 A While he was on the ground, [REDACTED] he said
5 he'll be waiting across the street when he gets out with
6 bombs. And he'll fucking shoot us. That's in quotes.

7 Q Do you recall before that happened, attempting to
8 enter the courtyard?

9 A Yes.

10 Q And was there some direction or command made to
11 the defendant to comply with something?

12 A Yes.

13 Q What was -- what happened?

14 A Officer Donaldson told the defendant to step away
15 from the gate. And Officer Hauscarriague told him to
16 stop walking, once we got through the gate.

17 Q And did the defendant say anything at that point?

18 A May I refer to my report?

19 Q Do you think that would refresh your memory?

20 A Yes.

21 Q Okay. The way we do this is you read the portion
22 of your report, and then turn it over so we know you're
23 not reading, and see if your memory has been refreshed.

24 So go ahead and take your time and read
25 that portion of the report that you think might refresh
26 your memory.

27 Is your memory refreshed?

28 A Yes.

1 Q And what did he say when the officers asked him
2 to step away from the gate?

3 A I do not remember.

4 Q Okay. Do you -- in your report, do you recall
5 writing, Officer Donaldson gave [REDACTED] a command to step
6 away from the gate?

7 A Yes.

8 Q So officers could enter the courtyard?

9 A Yes.

10 Q And you have a quote from Mr. [REDACTED]

11 A Yes.

12 Q Do you recall what that quote is?

13 A Yes.

14 Q That's the question I'm asking. What did he say?

15 A He said, in quotes, fuck you, motherfuckers.

16 Q He said that toward Officer Donaldson or toward
17 you?

18 A Toward the officers at the gate.

19 Q And it was after that that he said he would kill
20 did you one by f'ing one?

21 A Yes.

22 Q And the gate was opened at that point?

23 A Yes.

24 Q And what happened after the gate was opened?

25 A After the gate was opened, officers made a
26 decision to take him down. We all ran toward [REDACTED]
27 and he was taken down. [REDACTED] began to struggle with
28 us, and Officer Hauscarriague and [REDACTED] both made

1 contact. They lost balance and tripped into the wall.

2 Q Okay. When you said there was a decision made to
3 take him down, was that discussed or something said
4 between the officers -- between you and the officer?

5 A It was unspoken. It was something that we need
6 to do to prevent injury to officers, staff, everyone else
7 in the area.

8 Q So who attempted to take him down?

9 A It was Officer Hauscarriague.

10 Q And where were you at while he was doing that?

11 A I was the third person running through the gate.

12 Q Okay. Officer Hauscarriague was the first person
13 to contact the defendant?

14 A Yes.

15 Q And who was behind him?

16 A Officer Becerra.

17 Q And then you?

18 A Yes.

19 Q Were you able to get your hands on the defendant?

20 A Not before he made contact with the wall.

21 Q Okay. How far did you have to go in order to get
22 close enough to him to contact him.

23 I'm talking about after you entered the
24 gate. How far did you have to walk to get to -- in order
25 to get to where the defendant was?

26 A Approximately 15 feet.

27 Q Okay. What did you see Officer Hauscarriague do
28 to attempt to contact or restrain Mr. [REDACTED]

1 A I saw Officer Hauscarriague attempt to contain
2 him around the waist area, just pulling him backward.

3 Q And how did he attempt to do that? What did he
4 physically do?

5 A He came up from behind [REDACTED] and grabbed him by
6 the waist, and tried to pull him to the ground.

7 Q Okay. And what happened when he tried do that?

8 A [REDACTED] turned around and just kind of pushed
9 away from it, and then they both had momentum, or picked
10 up momentum, actually.

11 Q When you say [REDACTED] turned around, so he
12 originally was grabbed or attempted to be held from
13 behind?

14 A Um-hmm.

15 Q By Officer Hauscarriague?

16 A Um-hmm.

17 Q And then while he was doing that, he was able to
18 turn around and face Officer Hauscarriague?

19 A Yes, sir.

20 Q And did Officer Hauscarriague still have ahold of
21 him?

22 A Yes.

23 Q And what happened next at that point?

24 A They both tripped over their own feet, and picked
25 up momentum, and hit the west wall of the courtyard.

26 Q When the defendant turned around and was facing
27 Officer Hauscarriague, do you remember him saying
28 anything?

1 A No.

2 Q Did he -- was he resisting, in your opinion,
3 Officer Hauscarriague's attempt to hold him?

4 A Yes, sir.

5 MS. CHO: Objection. Calls for legal conclusion.

6 THE COURT: Overruled.

7 BY MR. VAN CAMP:

8 Q After he had turned around and faced Officer
9 Hauscarriague, it was not very long after that that they
10 collided into the wall?

11 A Very quick.

12 Q So second or less; is that correct?

13 A Yes, sir.

14 Q Okay. Then what happened?

15 A Officer Hauscarriague and Officer Becerra
16 contained Mr. [REDACTED] to the ground, and put his arms
17 behind his back. That's when [REDACTED]
18 [REDACTED] up when he continued to make threat to
19 us.

20 Q You say you used two sets?

21 A [REDACTED]
22 [REDACTED] to give him a little extra
23 room.

24 Q And was the defendant on his stomach at that
25 point, on the ground?

26 A Yes, he was.

27 Q Was he injured?

28 A Yes, he was.

1 Q Did he say anything?

2 A Yes.

3 Q What did he say?

4 A If I may refer to my report.

5 Q Yes. So do it the same way you did before.

6 A All right.

7 Q Is your memory refreshed about what the answer
8 was?

9 A Yes.

10 Q What's the answer?

11 A Mr. [REDACTED] said you're all fucking done. I'll
12 be waiting across the street with bombs, and I'll fucking
13 shoot you when I get out.

14 Q Was he [REDACTED] at that point?

15 A Yes, sir, he was.

16 Q Show you what's been marked as Exhibit 1 for
17 identification.

18 Approach the witness, your Honor?

19 THE COURT: Yes.

20 BY MR. VAN CAMP:

21 Q Can you tell us what is in exhibit 1.

22 A This is the west wall of the courtyard.

23 Q What's that wall made out of?

24 A Concrete.

25 Q So concrete block?

26 A Yes.

27 Q Is that the wall that Officer Hauscarriague and
28 the defendant hit?

1 A Yes.

2 Q Were you able to -- after you got him contained
3 on the ground, what happened next?

4 A I immediately brought him up to a seated position
5 for recovery. And we contacted Med 23, which is our
6 medical unit at the fire department.

7 Q And did they respond?

8 A Yes.

9 Q What happened next?

10 A Documented, photos -- took photos of the subject,
11 and the fire department arrived to do a quick assessment,
12 clean up [REDACTED] and take him to Queen of the Valley.

13 MR. VAN CAMP: Nothing further.

14 THE COURT: Cross?

15 CROSS-EXAMINATION

16 BY MS. CHO:

17 Q Good morning, officer.

18 A Good morning.

19 Q When did you write your report in this case?

20 A After the incident.

21 Q Do you know what day?

22 A On March 3rd, 2016.

23 Q March 3rd? Was it the day of the incident?

24 A I'm sorry. March 3rd, 2017. The day of the
25 incident.

26 Q Does March 23rd sound correct?

27 A My I refer to my report?

28 Q Yes.

1 A Yes, that's correct.

2 Q So you wrote your report on the same day?

3 A Yes.

4 Q And prior to writing your report, did you talk to

5 any others about what happened?

6 A No, I did not.

7 Q And you went to the academy to become a police

8 officer; is that correct?

9 A Yes.

10 Q And at the academy, you're trained to write

11 complete and accurate reports?

12 A Yes.

13 Q And in this case, you think you have written a

14 complete and accurate police report?

15 A Yes, ma'am.

16 Q When you approached the courtyard, could you hear

17 Mr. [REDACTED] prior to going into the courtyard?

18 A I heard a male subject. I did not identify him

19 as Mr. [REDACTED] at the time.

20 Q Was this your first contact with Mr. [REDACTED]

21 A Yes, ma'am.

22 Q You said earlier that you ran through the gate to

23 the courtyard; is that correct?

24 A Yes, ma'am.

25 Q So, basically, when all the officers went through

26 the gate, they all immediately ran toward Mr. [REDACTED]

27 A Yes.

28 Q And at the time Mr. [REDACTED] was kind of pacing

1 the courtyard; is that correct?

2 A Yes.

3 Q And Officer Hauscarriague was the first officer

4 to make contact with Mr. [REDACTED]

5 A Yes.

6 Q How long would you estimate it took for Officer

7 Hauscarriague to get through the gate to make contact

8 with Mr. [REDACTED]

9 A Approximately two seconds.

10 Q In those two seconds, was Mr. [REDACTED] walking

11 with his back toward you?

12 A Yes.

13 Q And his back toward Officer Hauscarriague?

14 A Yes.

15 Q And could you see Mr. [REDACTED]

16 A Yes.

17 Q And what were his hands doing?

18 A Mr. [REDACTED] hands?

19 Q Yes.

20 A It was clenched by his sides.

21 Q Did he reach for any pockets?

22 A No, he did not.

23 Q Did he reach toward his waistband?

24 A No, he did not.

25 Q Did he keep his arms straight the whole time?

26 A Yes.

27 Q And was there anything in his hand?

28 A I don't recall.

1 Q Was there a Walkman in one of his hands?
2 A There may have been.
3 Q Do you remember?
4 MR. VAN CAMP: Objection. Ask the answer be
5 stricken. Speculation.
6 THE COURT: Sustained. Granted.
7 MS. CHO: Sure.
8 BY MS. CHO:
9 Q Did you later see a Walkman in the area?
10 A Yes.
11 Q Where was that?
12 A I saw it on the ground.
13 Q Was it near the wall where the takedown happened?
14 A Yes.
15 Q Was the Walkman damaged?
16 A I don't recall.
17 Q So Mr. [REDACTED] was walking with his back toward
18 Officer Hauscarriague, with his hands in fists for about
19 two seconds before Officer Hauscarriague made contact
20 with him?
21 A (Witness nods head.)
22 Q And you saw Officer Hauscarriague run toward
23 Mr. [REDACTED]
24 A That's correct.
25 Q And he immediately put his arms around him?
26 A Yes.
27 Q And Officer Hauscarriague is taller than Mr.
28 [REDACTED] is that correct?

1 A That's correct.

2 Q Did he have to lean down, or do anything to put
3 his arms around Mr. [REDACTED]

4 A He had to lean down a little bit.

5 Q And since he was running towards him, how did he
6 make contact? Did they move forward once he made contact
7 with him?

8 A Officer Hauscarriague made contact with him and
9 grabbed him around the waist, and they tripped.

10 Q And how did he grab him by the waist?

11 A He had just both hands just around his waist.
12 Just (indicating.)

13 Q Do you know if his arms went all the way around
14 his waist?

15 A They were not.

16 Q And the way he was running toward him, would you
17 say he tackled him?

18 A No.

19 Q How would you describe the impact?

20 A With the wall?

21 Q No, when Officer Hauscarriague ran toward Mr.

22 [REDACTED]

23 A It wasn't really much of an impact. Officer
24 Hauscarriague ran up to him, stopped to grab him, tried
25 to pull him to the grouped.

26 Q And how did Mr. [REDACTED] turn his body?

27 A He turned his body to the left, so he faced
28 Officer Hauscarriague.

1 Q And was he able to get his body all the way
2 around?

3 A Yes.

4 Q And how soon after that did they fall?

5 A Approximately two seconds.

6 Q So this whole physical interaction lasted
7 seconds?

8 A Yes, ma'am.

9 Q So Mr. [REDACTED] turned. Did you see him do
10 anything with his arms?

11 A He had his right arm on Officer Hauscarriague's
12 upper body area.

13 Q What was his arm doing?

14 A Looked like it was pushing, from where I was
15 positioned in the courtyard.

16 Q Why did it look like it was pushing?

17 A Mr. [REDACTED] arm was extended. Looked like it
18 was a pushing motion.

19 Q And does Officer Hauscarriague still have his
20 arms around him?

21 A Yes.

22 Q Okay. So Mr. [REDACTED] turned, and is his arm is
23 going straight out. Can you describe where his arm was?

24 A Mr. [REDACTED] was going straight, or straight down.
25 Against Officer Hauscarriague (indicating).

26 Q So, for the record, this officer put his arm
27 straight out in front of him with an open palm up?

28 THE COURT: Show me again what you're

1 demonstrating, officer.

2 THE WITNESS: (Indicating.)

3 THE COURT: Yes. That accurately characterizes
4 what the officer is demonstrating.

5 BY MS. CHO:

6 Q So Mr. [REDACTED] was able to push his body away
7 from Officer Hauscarriague?

8 A Yes.

9 Q And within seconds they fell?

10 A Yes.

11 Q Have you discussed the incident with the other
12 officers that responded that day?

13 A Yes.

14 Q Has anybody ever directed you to say anything,
15 specifically, about what happened?

16 A No.

17 Q And your testimony today is the truth based on
18 your memory?

19 A Yes.

20 Q And not influenced by discussing this incident
21 with any other officers?

22 A Yes, ma'am.

23 Q Or any other witnesses to the incident?

24 A Yes.

25 Q Did you also respond to the hospital to take
26 photos of Mr. [REDACTED]

27 A Yes, ma'am.

28 MS. CHO: May I approach the witness, your Honor?

1 THE COURT: You may.

2 BY MS. CHO:

3 Q I'm showing you what's been previously marked as
4 Defense Exhibit B and C.

5 Starting with Exhibit B, do you recognize
6 what this is?

7 A Yes, ma'am.

8 Q Is that a photo you took --

9 A Yes, ma'am.

10 Q -- of Mr. [REDACTED]

11 A Yes.

12 Q And what's shown in the photo?

13 A Mr. [REDACTED] got a bandage on his forehead. One
14 bandage on his nose. He has his mouth open.

15 Q And those were taken at the Queen of the Valley
16 on March 23rd?

17 A Yes, ma'am.

18 Q And showing you Defense Exhibit C, can you tell
19 us what's in that photo?

20 A [REDACTED] [REDACTED] [REDACTED] [REDACTED]

21 Q And that was also taken at the Queen of the
22 Valley Hospital on March 23rd?

23 A Yes, ma'am.

24 Q You said you were the third person through the
25 gate. And I think you said Officer Becerra was the
26 second person?

27 A Yes, ma'am.

28 Q During Officer Hauscarriague's takedown of Mr.

1 [REDACTED] did anybody else manage to get in there?

2 A No, ma'am.

3 MS. CHO: Okay. No further questions.

4 THE COURT: Redirect.

5 REDIRECT EXAMINATION

6 BY MR. VAN CAMP:

7 Q The impact on the wall, did you see

8 Mr. -- Officer Hauscarriague impact the wall?

9 A Yes.

10 Q Did you see what part of his body hit the wall?

11 A His forehead.

12 Q And did you see any injury on Officer
13 Hauscarriague?

14 A I saw [REDACTED] [REDACTED]
15 when I asked if he was okay.

16 Q How about the defendant, Mr. [REDACTED] How did he
17 impact the wall?

18 A He impacted his face against the wall.

19 MR. VAN CAMP: Nothing else.

20 RECROSS-EXAMINATION

21 BY MS. CHO:

22 Q In order for Mr. [REDACTED] face to impact the
23 wall, did he turn back around?

24 A Yes, he did.

25 Q When did that happen?

26 A While they were struggling, and they tripped over
27 their own feet, Mr. [REDACTED] was pushing off of Officer
28 Hauscarriague's shoulder, and trying to turn away from

1 Officer Hauscarriague before he hit the wall, because
2 they were stumbling on their feet.

3 Q And did Officer Hauscarriague still have his arms
4 around Mr. [REDACTED] when they hit the wall?

5 A Yes.

6 Q So he was within his arms when he turned back
7 around?

8 A Yes.

9 Q And was Officer Hauscarriague pulling him back
10 around?

11 A No.

12 Q So what kind of force was Officer Hauscarriague
13 applying?

14 A I didn't see any type of force. It was more of a
15 hold that just went over once they hit like a bad patch
16 of land.

17 MS. CHO: Okay. No further questions.

18 MR. VAN CAMP: Nothing else.

19 THE COURT: Thank you, officer.

20 JAMIE DAVIES,

21 a witness called by the People, who, being first duly
22 sworn to tell the truth, the whole truth, and nothing but
23 the truth, was examined and testified as follows:

24 THE BAILIFF: Take a seat. Once you're seated,
25 state and spell your first and last name for the record.

26 THE WITNESS: First name is Jamie, J-a-m-i-e.
27 Last name is Davies, D-a-v-i-e-s.

28 ///

DIRECT EXAMINATION

BY MR. VAN CAMP:

Q And your occupation?

A Police officer.

Q And did you complete -- how long have you been a police officer?

A Approximately three years.

Q Did you complete a POST academy training in order to become a police officer?

A I went to a Department of State Hospital approved academy.

Q And did you complete that academy?

A I did.

Q And did you -- in the course of your training, did you complete a course in giving hearsay testimony pursuant to Prop 115?

A Yes.

Q Your primary responsibility includes the enforcement of any law, the detection and apprehension of persons who have violated any laws, or the investigation and preparation for prosecution of cases involving violations of the laws?

A Yes.

Q Okay. Sorry for that long question.

Were you involved in interviewing the defendant, Mr. [REDACTED] after this incident?

A Yes, I was.

Q And what day did you interview him?

1 A The next morning. On the 24th.

2 Q And where was that interview?

3 A It was on unit A-3, where [REDACTED] was assigned
4 for that time period.

5 Q That's a medical unit?

6 A Yes.

7 Q And did he agree to talk to you and waive his
8 rights?

9 A Yes, he did.

10 Q You advised him?

11 A Yes.

12 Q Did you ask him about what had happened?

13 MS. CHO: Objection. Foundation.

14 THE COURT: Sustained.

15 BY MR. VAN CAMP:

16 Q About Miranda?

17 THE COURT: Yes.

18 BY MR. VAN CAMP:

19 Q How did you advise him of his Miranda rights?

20 A I read the Miranda rights off the Napa County
21 Department issued Miranda card.

22 Q And do you have a copy of that card with you?

23 A I do not have it with me.

24 Q Do you recall what the rights that you read to
25 him were?

26 A Not off the top of my head. I read them. I keep
27 the card on my person. And I read it verbatim from the
28 card.

1 Q Where is the card now?

2 A It is with my gear for duty.

3 Q And where is your gear?

4 A It is at work, sir.

5 Q Does anybody else have one of those cards with
6 them today?

7 A I'm not sure.

8 Q Well, I need to know what --

9 THE COURT: Counsel, I don't need to see the
10 card. They're all the same. In the absence of evidence
11 to the contrary, I accept the officer's characterization
12 of the standard card as containing what is required by
13 Miranda, unless there's some evidence to the contrary.

14 You need to establish the rest of the waiver
15 process.

16 MR. VAN CAMP: Thank you, your Honor.

17 BY MR. VAN CAMP:

18 Q When you advised him of those rights, did he have
19 any questions about them?

20 A He said no lawyer. Keep going.

21 Q So, therefore, you assumed that he agreed to talk
22 to you by waiving his rights?

23 A That's correct.

24 Q Were there other officers with you?

25 A Yes.

26 Q And was this interview recorded?

27 A Yes.

28 Q Did you ask him what had happened in the

1 courtyard the date before?

2 A Yes.

3 Q And what did he tell you?

4 A He told me that he first -- can I refer to my
5 report for the first statement?

6 Q If you need to refresh your memory, yes.

7 A He basically stated that officers came and they
8 were harassing him to begin with. And then as the
9 officers approached the Mr. [REDACTED] that they just
10 jumped him. That's what he said.

11 Q Okay. Did he -- did you ask him whether he made
12 any threats prior to the officers jumping him?

13 A I don't recall.

14 Q Do you recall if he -- did he tell you he made
15 any threats after he had been jumped?

16 A Yes.

17 Q And what did he say?

18 A Mr. [REDACTED] basically stated that if he had the
19 gun to kill these officers, he would have. And he told
20 us how he would have done that.

21 Q Did you asked him if he intended to harm an
22 officer during this incident?

23 A I do not recall.

24 Q Did he say anything about wanting to kill an
25 officer during this incident?

26 A May I reference to my report?

27 Q If it refreshes your recollection, yes.

28 The way we do this, open your report and

1 read it, and then cover it so we know you're not reading
2 it, and see if your memory is refreshed.

3 A Okay.

4 THE COURT: She's ready.

5 MR. VAN CAMP: Okay. I'm sorry, your Honor.

6 BY MR. VAN CAMP:

7 Q Has your memory been refreshed regarding your
8 answer?

9 A Yes. Mr. [REDACTED] stated that he wanted to kill
10 them, or get even with them in anyway he could, because
11 the officers come to his unit all the time and harass
12 him.

13 Q Of when -- did you try to clarify with him what
14 he meant when he stated that the officers jumped him?

15 A Mr. [REDACTED] said that when officers approached
16 him, they rammed him into the wall. But that's all that
17 Mr. [REDACTED] said in that statement.

18 MR. VAN CAMP: Okay. Nothing further.

19 THE COURT: Cross.

20 CROSS-EXAMINATION

21 BY MS. CHO:

22 Q Good morning, officer.

23 When you read Mr. [REDACTED] his rights, did
24 he say he understood his rights?

25 A Yes, he did.

26 Q And did you ask him if he understood after each
27 admonition?

28 A I do not recall.

1 Q Mr. [REDACTED] told you that the police officers
2 jumped him from behind; is that right?

3 A Yes.

4 Q And they ran me into the god damn wall; is that
5 right?

6 A Yes.

7 Q And was Mr. [REDACTED] -- can you describe his mood
8 on the day of the interview?

9 THE COURT: Describe what?

10 MS. CHO: His mood.

11 THE WITNESS: Mr. [REDACTED] complained that he was
12 in pain. He seemed agitated by his tone of voice, but he
13 was very adamant that he wanted to tell his side of the
14 story.

15 BY MS. CHO:

16 Q Have you had any prior contact with Mr. [REDACTED]

17 A Yes, I have.

18 Q How many times?

19 A One time that I can recall.

20 Q Was his mood similar to how he was that prior
21 time you saw him?

22 A Can you rephrase the question?

23 Q Was Mr. [REDACTED] more agitated than the last time
24 you saw him?

25 A A little less agitated. You're talking about the
26 interview?

27 Q That's correct.

28 A Yes..

1 Q So during the interview, he was less agitated
2 than the last time you saw him?

3 A Yes.

4 Q And when was that?

5 A I don't recall the exact date, but I responded to
6 a call for help to staff that Mr. [REDACTED] was involved in
7 prior to this incident.

8 Q Do you know about how long ago?

9 A I can't recall.

10 MS. CHO: No further questions.

11 THE COURT: Redirect.

12 MR. VAN CAMP: No.

13 THE COURT: Thank you, officer.

14 MR. VAN CAMP: Thank you.

15 Call Officer Donaldson.

16 STUART DONALDSON,

17 a witness called by the People, who, being first duly
18 sworn to tell the truth, the whole truth, and nothing but
19 the truth, was examined and testified as follows:

20 THE BAILIFF: Once you're seated, state and spell
21 your first and last name for the court reporter.

22 THE WITNESS: Stuart Donaldson. S-t-u-a-r-t,
23 D-o-n-a-l-d-s-o-n.

24 DIRECT EXAMINATION

25 BY MR. VAN CAMP:

26 Q Your occupation?

27 A Police officer at Napa State Hospital.

28 Q And did you -- how long have you been a police

1 officer?

2 A Approximately three years.

3 Q And did you complete a POST academy training in
4 order to become a police officer?

5 A No, sir.

6 Q Did you complete a course at a POST academy, or
7 POST certified academy?

8 A No, sir.

9 Q What training have you had?

10 A I went to the state equivalent of a POST academy.

11 Q And during that -- when you say the state
12 equivalent, when was that?

13 A I believe the end date was in 2014 of November.

14 Q And this is a academy for state hospital police?

15 A It is mandated by the Department of State
16 Hospitals.

17 Q And did you complete an academy?

18 A Yes.

19 Q And did you complete a course in giving hearsay
20 testimony at preliminary hearings pursuant to Prop 115?

21 A Yes, sir.

22 Q And have you previously qualified under Prop 115?

23 A Yes, sir.

24 Q Do your primary responsibilities include the
25 enforcement of any laws, detection and apprehension of
26 persons who have violated any laws, or the investigation
27 and preparation for prosecution of cases involving
28 violations of laws?

1 A Yes, sir.

2 Q Okay. Were you on duty March 23rd of this year
3 at Napa State Hospital in Napa County?

4 A Yes, sir.

5 Q Had you -- did you respond to this T-13 incident?

6 A Yes, sir.

7 Q And that was in the afternoon hours?

8 A Yes, sir.

9 Q Had you had prior information about a threat that
10 had been made by a subject on that unit?

11 A Yes, sir.

12 Q And what was that?

13 A Previously there had been an incident with Mr.
14 [REDACTED] where he headbutted an officer while being
15 contained.

16 He's was very agitated, and during briefing
17 that morning -- or excuse me, that afternoon, Sergeant
18 Flores notified us that he had made threats that he
19 was willing -- he wanted to go back to jail, was willing
20 to kill an officer to do so.

21 Q This was a couple of days before the incident?

22 A I believe it was two days before.

23 Q So you knew Mr. [REDACTED] on the date of this
24 incident?

25 A Yes, sir.

26 Q And can you identify him here in Court so the
27 judge knows who you are talking about?

28 A Seated to my right, wearing blue shirt, blue

1 pants, and orange shoes.

2 THE COURT: The record may reflect identification
3 of the defendant.

4 MR. VAN CAMP: Thank you.

5 BY MR. VAN CAMP:

6 Q When you responded to the call, on T-13, did you
7 see the defendant?

8 A I heard him before I saw him.

9 Q What did you hear him say?

10 A I heard something to the effect, like, I'm going
11 to kill those Filipino motherfuckers.

12 Q And how far away from the unit were you at that
13 point, or the courtyard?

14 A Approximately 20 to 30 feet.

15 Q And what happened next?

16 A We ran to the courtyard. I recognized the voice
17 as [REDACTED] With the previous incident in mind, I knew
18 that he was a threat to staff, and other patients. So as
19 we approached the metal chain link fence, which was an
20 entryway into the courtyard, I saw Mr. [REDACTED] with his
21 back turned to us.

22 Officer Tweedy approached the gate. I
23 asked [REDACTED] to step away from the gate. [REDACTED]
24 complied. He began walking westward. Officer Tweedy
25 opened the gate.

26 Q What did the defendant say when you gave him the
27 command to get away from the opening of the gate?

28 A May I refer to my report?

1 Q If it would refresh your memory, please.

2 And you saw the procedure on how we do
3 that?

4 A Yes, sir.

5 Q Thank you.

6 THE COURT: Okay. Go ahead, Mr. Van Camp.

7 BY MR. VAN CAMP:

8 Q Do you recall what the defendant said to you when
9 you asked him to step away from the gate?

10 A Yes, sir. He said fuck you, motherfuckers.

11 Q But he complied and walked away?

12 A He began to walk away.

13 Q And how was he acting with his fists at that
14 point, or his arms?

15 A [REDACTED] was -- his arms were rigid. His fists
16 were clenched. His body's demeanor was very aggressive.
17 Similar to when he headbutted the officer. He was
18 showing the same pre-fight indicators. I recognized it
19 as he was not ready to comply with us.

20 Q What happened next?

21 A Officer Hauscarriague entered the gate first,
22 gave [REDACTED] the command to stop. [REDACTED] began -- he
23 kicked a bench, kicked a ball. Seemed to be aggravated
24 and aggressive. He said I'm going to kill you officers.

25 Q And what happened next?

26 A Officer Hauscarriague attempted to gain control
27 of [REDACTED] by taking him to the ground.

28 Q How did he attempt to do that?

1 A Officer Hauscarriague approached him from the
2 back. They were both facing west. Officer Hauscarriague
3 grabbed him around the waist and attempted to drag him to
4 the ground.

5 Q What happened after he attempted to grab him by
6 the waist?

7 A [REDACTED] pushed Officer Hauscarriague's right
8 shoulder with his right arm, and attempted to break free
9 of the takedown. At the same time, he attempted to run
10 away, out of the takedown, I think gain momentum.

11 Q What happened next?

12 A [REDACTED] -- or excuse me, Hauscarriague grabbed
13 him to try to stop him from getting away from him. Their
14 momentum, they ran into the wall.

15 MR. VAN CAMP: Nothing else.

16 THE COURT: Cross.

17 CROSS-EXAMINATION

18 BY MS. CHO:

19 Q In what order did you enter through the
20 courtyard?

21 A I was the last one in.

22 Q Were you pretty close behind the other officers?

23 A Kind of single file. I was the last officer in.
24 So from the initial point of contact, I was 15 feet away.

25 Q So you locked the gate before you went toward the
26 incident?

27 A Yes, ma'am.

28 Q So your back was turned?

1 A No, ma'am.

2 Q What did you have to do to lock the gate?

3 A Put a key in the lock and turn the key to lock

4 the gate.

5 Q And you could still see everything that was

6 happening?

7 A Yes, ma'am.

8 Q And how long would you estimate a lapse between

9 Officer Hauscarriague going through the gate and making

10 contact with Mr. [REDACTED]

11 A Can you reask that?

12 Q Did you write a report in this case?

13 A Yes, ma'am.

14 Q And when did you write the report?

15 A Following the incident.

16 Q The same day?

17 A Yes.

18 Q And have you been trained to write complete and

19 accurate reports?

20 A Yes, ma'am.

21 Q And did you discuss what happened with any other

22 officers prior to writing your own report?

23 A No, ma'am.

24 Q Any other witnesses prior to writing your report?

25 A I conducted two interviews.

26 Q Okay. And is your report a complete, accurate

27 recollection of what happened during the incident?

28 A Yes, ma'am.

1 Q Are you aware that Mr. [REDACTED] medication had
2 been changed shortly before the incident?

3 A No, ma'am.

4 Q Were you present during the incident where you
5 said Mr. [REDACTED] headbutted an officer?

6 A Yes, ma'am.

7 Q When was that?

8 A I don't recall the specific date.

9 Q So on March 23rd, when you saw Mr. [REDACTED] his
10 back was toward you and other officers when you entered
11 the gate?

12 A Yes ma'am.

13 Q And were you able to see both of his hands?

14 A Yes, ma'am.

15 Q Did you see him with anything in one of his
16 hands?

17 A No, ma'am.

18 Q You never saw a Walkman in his hand?

19 A No, ma'am.

20 Q And you could clearly see his hands?

21 A Yes, ma'am.

22 Q And so you believed he had empty fists when his
23 hands were clenched?

24 A Yes, ma'am.

25 Q Did Officer Hauscarriague run towards Mr.

26 [REDACTED]

27 A Yes, ma'am.

28 Q Did he stop before making contact with him?

1 A He slowed down, yes.

2 Q And how did he make contact with him?

3 A He grabbed [REDACTED] around the waist.

4 Q With both arms?

5 A Yes.

6 Q And were you able to see if his arms went all the

7 way around his waist?

8 A I was not.

9 Q Are you familiar with how the tall Mr. [REDACTED]

10 is?

11 A [REDACTED]

12 [REDACTED]

13 A Sure.

14 Q Are you familiar with his age?

15 A I believe he's late [REDACTED].

16 Q Would it refresh your recollection to refer to

17 your report?

18 A I don't believe I have that with me up here.

19 MR. VAN CAMP: Stipulate to the age. It is on

20 the complaint. Under the charges summary at the end of

21 the complaint.

22 THE COURT: Which is what?

23 MS. CHO: [REDACTED].

24 MR. VAN CAMP: [REDACTED] is his birthday.

25 THE COURT: [REDACTED] [REDACTED]

26 MR. VAN CAMP: Yes. That's correct, your Honor.

27 THE COURT: Okay. Stipulate to [REDACTED]

28 MS. CHO: Okay.

1 BY MS. CHO:

2 Q And, I'm sorry, did you say his hand -- did you
3 say whether or not Officer Becerra got his hands around
4 Mr. [REDACTED]

5 A I could not see for sure.

6 Q So from your view point, you're four officers
7 back, and both Officer Hauscarriague and Officer
8 Becerra's backs are toward you?

9 A Yes, sir.

10 Q And how many seconds would you say from the time
11 Officer Hauscarriague made contact to when they hit the
12 wall?

13 A Two to three seconds.

14 Q And Officer Hauscarriague grabbed him around the
15 waist. You saw Mr. [REDACTED] turn; is that right?

16 A His upper body turned to his right and kind of
17 pushed his hand down with his open palm on his right arm.

18 THE COURT: The officer is demonstrating a
19 downward motion with his arm, which in conjunction with
20 his testimony, I construe to mean he was demonstrating
21 that the defendant was pushing down on the officer's
22 shoulder.

23 THE WITNESS: That's correct, sir.

24 THE COURT: As if to -- well, I won't try to
25 characterize it. As if to break away, I suppose, is what
26 I --

27 THE WITNESS: That would be correct.

28 THE COURT: -- is what I construed from the

1 officer's demonstration, the witness's demonstration and
2 his testimony. He was trying to push away --

3 THE WITNESS: Yes.

4 THE COURT: -- the officer from -- I have trouble
5 with the officer's name.

6 THE WITNESS: Hauscarriague.

7 THE COURT: Officer Hauscarriague.

8 BY MS. CHO:

9 Q So Mr. Hauscarriague is about seven inches taller
10 than Mr. [REDACTED]

11 A Yes.

12 Q How did he pushed down on his shoulder? Can you
13 describe that?

14 A Officer Hauscarriague was dragging his feet, and
15 that would put him at a lower place.

16 Q What do you mean he was dragging his feet?

17 A His hands were around his waist and [REDACTED] was
18 actively walking away. Hauscarriague was trying to drag
19 him to the ground, so both knees and both feet were on
20 the --

21 Q So when he -- Officer Hauscarriague made contact
22 with Mr. [REDACTED] did he basically fall on him?

23 A He was in a -- it was in a controlled takedown.
24 So he was trying to take [REDACTED] to the ground, to get it
25 to a safe situation for officer [REDACTED] And that it an
26 easier position for officers to control.

27 Q So how did Officer Hauscarriague end up on his
28 knees?

1 THE COURT: End up what?

2 MS. CHO: On his knees.

3 THE WITNESS: With his momentum, trying to take
4 him to the ground, he was pulling to his left. [REDACTED]
5 was turning to his right in an attempt to break the
6 control.

7 BY MS. CHO:

8 Q So when he made contact, it's your testimony that
9 Mr. [REDACTED] was running from him?

10 A He was walking away.

11 Q So when -- while he's walking away, that's how
12 Officer Hauscarriague gets pulled down to his knees?

13 A He was trying to drag him to the ground so he
14 could get to a lower position.

15 Q So he went down onto his knees intentionally; is
16 that right?

17 A I don't know if he did it intentionally, but
18 that's what I saw.

19 Q And since he's on his knees, that's how Mr.
20 [REDACTED] pushed down?

21 A In an attempt to break free, yes.

22 Q And was he able to turn all the way around?

23 A I saw his shoulder, and he had turn. I couldn't
24 see if his lower body was turned.

25 Q And then did he turn back around toward the wall?

26 A [REDACTED] pushed on his shoulder, and when he -- he
27 accelerate to break this tackle. He was accelerating
28 toward the wall.

1 Q To break the tackle?

2 A That would be the layman's term, but it was not a
3 tackle. It looks like when someone breaks a tackle, but
4 it was a control hold, take him to the ground.

5 Q So I'm not sure I understand entirely what you're
6 saying. So he turned and pushed off the officer's
7 shoulder, and turned back around?

8 A It was all one motion.

9 Q Okay. Can you describe it again?

10 A So he pushed on his shoulder, turned, pushed on
11 his shoulder, and attempted to run to break the tackle
12 simultaneously.

13 Q And was he able to run?

14 A They accelerated in the opposite direction of the
15 takedown.

16 Q By accelerate, was he taking the steps, or was
17 he --

18 A [REDACTED] took approximately two steps before they
19 collided with the wall.

20 Q So he was never able to run?

21 THE COURT: I'm sorry, he being Mr. [REDACTED]

22 MS. CHO: Mr. [REDACTED]

23 THE WITNESS: Run free.

24 BY MS. CHO:

25 Q Right.

26 A He was -- Hauscarriague also had his hands on
27 him.

28 Q And prior to Officer Hauscarriague making

1 contact, he was not running?

2 A He was walking.

3 Q Okay. Did you see a Walkman in the area after
4 the incident?

5 A I did not.

6 Q Did you ever see Mr. [REDACTED] running at any of
7 the officers?

8 A At what time?

9 Q Prior to Officer Hauscarriague making contact
10 with him?

11 A I did not.

12 Q His back was toward him?

13 A Yes ma'am.

14 Q Toward you and all the other officers?

15 A Yes, ma'am.

16 MS. CHO: No other questions.

17 REDIRECT EXAMINATION

18 BY MR. VAN CAMP:

19 Q Did Officer Hauscarriague give a command to Mr.

20 [REDACTED]
21 A Yes. He told him to stop.

22 Q Is this before he put his hands on him or after?

23 A Before.

24 Q And how did Mr. [REDACTED] respond?

25 A I believe he said, I'm going to kill you
26 officers.

27 Q And it was after that that the officer put his
28 hands on him?

1 A Yes, sir.

2 Q Was there any time that Mr. [REDACTED] was trying
3 to -- let me strike that.

4 Was Mr. [REDACTED] ever pushing free with his
5 legs?

6 A The best I could say, it would be -- it looked as
7 if when a running back breaks a tackle, is what it looked
8 like to me.

9 Q And it as during that momentum that they hit the
10 wall?

11 A Yeah, that's what I saw, how they collided with
12 the wall. I never saw [REDACTED] collide with the wall.

13 Q You were focused on Hauscarriague?

14 A From my vantage point, I saw Hauscarriague more.
15 I saw [REDACTED] and I saw Hauscarriague's neck snap back.
16 And that's when I first I saw the officer was hurt.

17 Q Snap back after it hit the wall?

18 A Yes.

19 MR. VAN CAMP: Nothing else.

20 MS. CHO: Nothing further.

21 THE COURT: Okay. Thank you.

22 Did I hear you say that was your last
23 witness?

24 MR. VAN CAMP: Yes. I would offer Exhibit 1.
25 And Exhibit 2 is the medical record of that were received
26 regarding Mr. Hauscarriague's treatment.

27 THE COURT: Any objection to one or two?

28 MS. CHO: No, your Honor.

1 THE COURT: One and two are received.

2 How about your exhibits A, B and C?

3 MR. VAN CAMP: No objection.

4 THE COURT: Okay. A, B and C are received.

5 MS. CHO: Thank you.

6 THE COURT: Any defense evidence?

7 MS. CHO: No, your Honor.

8 THE COURT: Okay. I don't know what the
9 reporter's stamina is. As far as argument, do you
10 anticipate extensive argument or not?

11 MS. CHO: Just a few minutes on my end.

12 THE COURT: Okay. Mr. Van Camp?

13 MR. VAN CAMP: Basically, I'm going to submit on
14 the allegations. I think he used force or violence in
15 attempting to resist an executive officer, that being
16 Officer Hauscarriague. And that he battered the officer.
17 And that battery resulted in an injury to the officer.
18 And that injury was [REDACTED] which is a serious and
19 significant issue under 12022.7.

20 THE COURT: Okay. Ms. Cho?

21 MS. CHO: Both Counts one and two require lawful
22 performance of a peace officer. We have a few different
23 ways to view this.

24 If we view this as a lawful arrest, or a
25 lawful detention, then Mr. [REDACTED] action would be a
26 violation of the law. However, if there was not lawful
27 detention, or if excessive force was used, Mr. [REDACTED]
28 actions would be justified.

1 Mr. [REDACTED] was seen pacing through the yard
2 prior to the officers coming into the courtyard. He was
3 making threatening statements. But I do think that the
4 Court has to keep in mind that this is at Napa State
5 Hospital, where someone has been committed due to mental
6 illness, and Mr. [REDACTED] was in an agitated state,
7 clearly from his statements and his actions that day.

8 So prior to the officers coming to the
9 scene, they have no information about what had caused the
10 alarm to be pressed. They had no information about
11 whether or not Mr. [REDACTED] had already committed any acts
12 of violence. They had no idea.

13 So when they come onto the scene, all they
14 have are the facts of what they're able to view in the
15 few seconds before they entered the courtyard.

16 They see Mr. [REDACTED] facing -- walking.
17 He's never running, never making any threatening
18 movements at police officers. He kicked a ball in the
19 opposite direct of the police officers. And Mr. [REDACTED]
20 has his back toward the police officer.

21 So in order to make a detention, lacking a
22 2652 and 2670, we have to decide whether or not it's
23 enough reason for the officers to make physical contact,
24 to use force in order to get Mr. [REDACTED] to stop pacing.

25 This is a situation where Mr. [REDACTED] wasn't
26 facing the officers even, making lunging or threatening
27 movements. I think there would be reason for the
28 officers to physically contain him, but with his back

1 toward the officers, and in an agitated state, I think it
2 is excessive for an officer to basically tackle him from
3 behind. Keeping in mind that Mr. [REDACTED] back is
4 turned, any movements he makes to turn around and break
5 free, are basically defensive movements, not knowing who
6 is tackling him from behind, and trying to drag him to
7 the ground, when he's merely pacing the yard.

8 In 2670, going down to the bracket, where it
9 says C, use of force, the instruction says that special
10 rules control the use of force, peace officers may use
11 reasonable force to arrest or detain someone, to prevent
12 escape, to overcome resistance, or in self-defense.

13 If a person knows, or reasonably should
14 know, that a peace officer is arresting or detaining him
15 or her, the person must not use force or any weapon to
16 resist an officer's use of reasonable force. However,
17 you may not find the defendant guilty of resisting arrest
18 if the arrest was unlawful, even if the defendant knew or
19 reasonably should have known that the officer was
20 arresting him.

21 If a peace officer uses unreasonable or
22 excessive force while arresting or attempting to arrest
23 or detaining or attempting to detain a person, that
24 person may lawfully use reasonable force to defend
25 himself or herself.

26 A person being arrested uses reasonable
27 force when he or she uses that degree of force that he or
28 she actually believes is reasonably necessary to protect

1 himself or herself from the officer's use of unreasonable
2 or excessive force. And uses no more force than a
3 reasonable person in the same situation would believe is
4 necessary for his or her protection.

5 So what the Court has to decide is whether
6 or not tackling Mr. [REDACTED] from behind is excessive
7 force, given the circumstances where Mr. [REDACTED] -- they
8 have no information that Mr. [REDACTED] has harmed anyone.
9 They have no information that he has a weapon. They
10 can't merely speculate. No one saw him reaching toward
11 his waistband, toward any pocket as if to grab a weapon.
12 But he's merely walking back and forward with his fists
13 down.

14 He does move out of the way when the
15 officers tell him to move out of the way so they can get
16 through the gate. But he never runs. He never does
17 anything that would indicate that he was going to
18 physically attack the officers. And with his back toward
19 them, the officers -- Officer Hauscarriague tackled him.

20 I think there's an concerted effort to say
21 Officer Hauscarriague did not tackle him, but the
22 testimony is he ran toward him, grabbed him by the waist,
23 dragged him down from behind. And Mr. [REDACTED] turned to
24 try to get out of this, not knowing who was tackling and
25 dragging him down. And I think that's a reasonable
26 response from Mr. [REDACTED]

27 THE COURT: Counsel, wasn't Mr. [REDACTED] violating
28 section 422 of the Penal Code by threatening to kill the

1 officers?

2 MS. CHO: Whether or not they had probable cause
3 to arrest is different than whether or not they used
4 excessive force in effecting that arrest.

5 THE COURT: Well, my question is wasn't by
6 threatening to kill the officers in their presence,
7 wasn't he giving them probable cause to arrest him for
8 violation of 422, threats to commit crime resulting in
9 death or great bodily injury?

10 I realize there's another level to the
11 injury as to whether or not their use of force was
12 reasonable or not. But you said -- I thought you were
13 arguing that they had no probable cause to arrest him for
14 anything. It seems to me that given the threats that he
15 was making -- and I realized threats by disturbed
16 patients in the state hospital may be a little bit
17 different, but at least on the face of the evidence, he
18 was making threats to kill the officers, track them down,
19 find them when he got out, to bomb them, etc., etc.

20 It seems to me there's at least a prima
21 facie showing that he was making threats in violation of
22 422 of the Penal Code, and they had probable cause to
23 arrest him.

24 MS. CHO: If the Court so finds, that's fine.

25 THE COURT: Okay. Well, the next issue is did
26 they use reasonable force in seeking to arrest him.

27 Okay. Mr. Van Camp, anything further?

28 MR. VAN CAMP: I think the force used was

1 reasonable. They attempted to get him to stop. He
2 wouldn't stop. They attempted to hold him in place, and
3 intent was to take him down and detain him. And during
4 that attempt, he threatened to kill him. Or actually did
5 that before they put their hands on him.

6 And I think the attempt to hold him in place
7 and detain him after this alarm had been sounded, and
8 after he threatened the officers was -- the force used
9 was reasonable, wasn't excessive, and he required that
10 force. He tried to push away from the officer. He tried
11 to get away from the officer during that attempt. Both
12 of them lost balance, and both of them hit into the wall.

13 THE COURT: Okay. Is the matter submitted? .

14 MR. VAN CAMP: Yes.

15 MS. CHO: I do want to say in a state hospital
16 setting, for the officers to run through and within
17 seconds tackle Mr. [REDACTED] rather than trying to
18 deescalate the situation, rather than giving him verbal
19 commands to lie down, none of that was done. They
20 immediately rushed him and tried to take him down,
21 instead of trying to resort to other means before using
22 physical force.

23 So given the situation, given the
24 circumstances that Mr. [REDACTED] is a patient at the state
25 hospital, I do think it is excessive force.

26 I'll submit on that.

27 THE COURT: Okay. Well, clearly there's
28 sufficient evidence to hold to answer to count one, the

69.

As far as count two, my first impression -- not my first impression, but my impression up until the time I heard officer Donaldson's testimony was that a good argument could be made that the injury to the officer were more in the nature of an accident then a result of a battery.

But after I heard officer Donaldson's testimony, he maybe had a better vantage point, or maybe he was just better able to describe what he saw, it did sound to me like Mr. [REDACTED] was resisting, and committing a battery upon the officer in response to the officer's takedown effort, and was trying to break free, dragging the officer with him as he tried to get away, and the momentum of the two of them in fairly close proximity to the wall, carried them into the wall, so that they both hit the wall apparently headon, causing injury to both of them.

I think for preliminary hearing purposes, there's enough to say there was a battery on a peace officer, as charged in counts two.

As far as whether this use of force was reasonable, it seems to me when a state hospital inmate repeatedly threatens death to other persons, employees, to peace officers, and in the absence of an NGI plea, at this point, I think the officers were within their proper scope of their duties to take those threats seriously.

And, therefore, the use of a takedown --

1 let's call it a tackle, I'm not sure really it was a
2 tackled, it sounded more like it was an attempt to wrap
3 him up and bring him to the ground, rather than a tackle.
4 Like in at football or Rugby match.

5 I think that was an appropriate use of force
6 under the circumstances, using less physical methods to
7 deal with the situation in the context of a state
8 hospital setting, with a patient who is uttering clear,
9 immediate and specific threats of death, doesn't seem to
10 me to be -- well, it's obviously an option. But I think
11 the other option that they chose to use was acceptable.

12 Frankly, for a judicial officer, it's a
13 little hard to visualize the context of this incident,
14 other than what has been described here in court. I
15 think there's enough evidence to hold to answer on both
16 counts. So that's the finding.

17 MR. VAN CAMP: And finding on great bodily
18 injury, your Honor?

19 THE COURT: Yes, there was great bodily injury
20 established, alleged in the special allegations.

21 Over two weeks for arraignment, to July --
22 what date would counsel prefer?

23 MS. CHO: Can we do July 20th?

24 THE COURT: July 20th?

25 MR. VAN CAMP: That's fine.

26 THE COURT: Yes, that would be two weeks. July
27 20th at 8:30.

28 MR. VAN CAMP: Thank you.

1 MS. CHO: Thank you.

2 THE COURT: Exhibits will be returned to the
3 parties offering them.

4 (Whereupon, the proceedings were concluded.)

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1 STATE OF CALIFORNIA)
2 COUNTY OF NAPA) ss.

3
4 CERTIFICATE OF SHORTHAND REPORTER

5 I, BENITA DUNCAN, CSR No. 6715, a duly
6 qualified and acting Official Shorthand Reporter of the
7 Superior Court of the State of California, in and for the
8 County of Napa, do hereby certify:

9 That I acted as the Certified Shorthand
10 Reporter in the case of THE PEOPLE OF THE STATE OF
11 CALIFORNIA versus [REDACTED] NSC No. CR182796.

12 That I took down in shorthand writing the
13 testimony and proceedings had therein.

14 That thereafter I transcribed the same into
15 typewriting.

16 That the foregoing pages ____ through ____
17 inclusive, comprise a full, true and correct transcript
18 of proceedings had.

19 Dated this ____ day of _____, 2017.

20
21
22 BENITA DUNCAN, CSR No. 6715
23 Official Shorthand Reporter
24 County of Napa,
25 State of California

26 --oOo--
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